

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kathryn Duffy	Team: Team # 1	CCRB Case #: 201004954	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/10/2010 11:00 PM	Location of Incident: § 87(2)(b) PSA 4 stationhouse	Precinct: 07	18 Mo. SOL 10/10/2011	EO SOL 10/10/2011	
Date/Time CV Reported Sat, 04/10/2010 11:12 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/14/2010 2:16 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Eric Dym	00577	933762	PSA 4
2. POM Seth Bellber	09458	938053	PSA 4
3. POM Victor Rivas	16236	919623	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Christina Gonzalez	20611	941829	PSA 4
2. POM Kim Pierre	13800	940582	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.SGT Eric Dym	Discourtesy: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym spoke obscenely and/or rudely to § 87(2)(b)	
B.SGT Eric Dym	Abuse: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym stopped § 87(2)(b)	
C.SGT Eric Dym	Force: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym struck § 87(2)(b) with a blunt instrument.	
D.SGT Eric Dym	Force: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym used physical force against § 87(2)(b)	
E.POM Seth Bellber	Force: Outside § 87(2)(b) in Manhattan, PO Seth Bellber used physical force against § 87(2)(b)	
F.POM Victor Rivas	Force: Outside § 87(2)(b) in Manhattan, PO Victor Rivas used physical force against § 87(2)(b)	
G.POM Victor Rivas	Off. Language: Inside the PSA 4 stationhouse, PO Victor Rivas made remarks to § 87(2)(b) based upon his gender.	

Case Summary

The following complaint of police misconduct was made through 911 by § 87(2)(b) and by § 87(2)(b) who do not know the victims of the allegations, on April 10, 2010. The complaint was filed through IAB using log number 10-17920, which was forwarded to the CCRB and received on April 14, 2010.

On April 10, 2010, officers from PSA 4 including PO Christina Gonzalez, PO Seth Bellber, PO Victor Rivas and Sgt. Eric Dym interacted with § 87(2)(b) and his friend, § 87(2)(b) at § 87(2)(b) in Manhattan. Their interaction resulted in the following allegations:

- **Allegation A – Discourtesy:** Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym spoke rudely and obscenely to § 87(2)(b), § 87(2)(g).
- **Allegation B - Abuse of Authority:** Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym stopped § 87(2)(b), § 87(2)(g).
- **Allegation C – Force:** Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym struck § 87(2)(b) with a blunt instrument.
- **Allegation D – Force:** Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym used physical force against § 87(2)(b).
- **Allegation E – Force:** Outside § 87(2)(b) in Manhattan, PO Seth Bellber used physical force against § 87(2)(b), § 87(2)(g).
- **Allegation F – Force:** Outside § 87(2)(b) in Manhattan, PO Victor Rivas used physical force against § 87(2)(b), § 87(2)(g).
- **Allegation G – Offensive Language:** Inside the PSA 4 stationhouse, PO Victor Rivas made offensive remarks to § 87(2)(b) regarding his gender, § 87(2)(b), § 87(2)(g).

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Statement

§ 87(2)(b) provided a telephone statement on April 22, 2010, and was interviewed in-person on April 28, 2010. § 87(2)(g) On April 10, 2010, at approximately 11:00 pm, § 87(2)(b) was standing outside on a sidewalk near the corner of Columbia Street north of Delancey Street, socializing with his friends § 87(2)(b) brother, § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) and his friends stayed on the sidewalk chatting about such topics as basketball and girls between 9:30 pm and 11:00 pm. None of the members of the group was drinking alcoholic beverages. They didn't talk to anyone else in the area, and § 87(2)(b) didn't notice any women in the area.

At approximately 11:00 pm, two officers dressed in uniform approached the group and told them to "break it up." § 87(2)(b) identified one of the officers by name as PO Gonzalez, a Hispanic female officer who stands about 5'7" and has dark hair. Her partner was a 6'0" tall white male with blue eyes. (§ 87(2)(b), § 87(2)(g))

§ 87(2)(b).) One of the officers mentioned something about a call because the group was harassing women on the street, but § 87(2)(b) stated during the interview that he believed that no one called and the officer fabricated this as a reason to make § 87(2)(b) and his friends leave the area. He denied harassing or even interacting with any women in the area.

When the officers told the group to move along, § 87(2)(b) left by himself and walked south on Columbia Street before making a left and walking east on Delancey Street until he was near the intersection with Lewis Street. He estimated that this took about one minute. He heard someone calling out behind him, "Come here, motherfucker. Come here. What are you, stupid? Come here, motherfucker." § 87(2)(b) denied having any idea that the voice was directed at him, and he did not look back to see who was yelling. He ignored the voice until he felt someone approach him from behind, and Sgt. Dym then grabbed him by the shoulder, turned him around, and asked, "Didn't you hear me calling you?" As noted above, § 87(2)(b) referred to this officer as PO Bellber, PO Gonzalez's partner, but the investigation determined that Sgt. Dym was the officer who effected the stop and initiated contact with § 87(2)(b).

§ 87(2)(b) answered that he didn't answer to "motherfucker" and asked why he was being stopped. Sgt. Dym backed him into a fence surrounding the adjacent Baruch Houses, but was not touching him. § 87(2)(b) didn't notice other officers in the immediate vicinity, but assumed that at least PO Gonzalez was there. Three or four marked police vehicles pulled up alongside them and approximately five officers came running toward him from the vehicles. § 87(2)(b) denied being engaged in a physical struggle with Sgt. Dym at the time that backup officers arrived, and denied being physically engaged in any way that could be misconstrued as a struggle. He denied hearing PO Gonzalez or any other officer call for assistance and could not describe any of the responding officers, with the exception of one male officer dressed in a uniform with a white shirt and a gold shield. § 87(2)(b) could not otherwise describe this officer but thought he was either a lieutenant or a captain. He added this description later in the interview, after stating that he had been accused of biting either a lieutenant or a captain but denying that he had bitten anyone. Despite § 87(2)(b)'s description of a late-arriving white-shirted officer, the investigation identified the bitten officer as Sgt. Dym.

The five backup officers ran up to § 87(2)(b) and began to strike him all over his body. § 87(2)(b) could not describe where he was struck first or who struck him. At one point he stated that the white-shirted officer initiated the conflict by running up and punching him in the face and the other officers followed his example by using more physical force. However, he later said that unidentified, multiple officers struck him approximately seven times at different parts of his body, after which Sgt. Dym struck him in the face. § 87(2)(b) believed that Sgt. Dym was holding a metal object, perhaps handcuffs or brass knuckles, because the blow did not feel like "a regular punch," but he did not see anything in Sgt. Dym's hands prior to being punched. When Sgt. Dym struck him in the face, § 87(2)(b) fell to the ground, and officers gathered around and struck him about three more times, mostly in the back of the head. He was handcuffed, and felt several blows after being cuffed. He said that he was accused of biting Sgt.

Dym because when Sgt. Dym punched him in the face, he scraped his knuckles on § 87(2)(b)'s teeth. § 87(2)(b) denied seeing any visible injuries on Sgt. Dym.

While § 87(2)(b) was being secured, a crowd of passersby and building residents that included § 87(2)(b), and § 87(2)(b)'s brother, § 87(2)(b) began to gather. § 87(2)(b) spoke to his friends after the fact and they told him that they arrived in time to see him on the ground, handcuffed, and saw him being struck after being handcuffed, but they did not see his interaction with PO Bellber or the arrival of the backup units. Members of the crowd were saying that the officers should leave § 87(2)(b) alone because he was already handcuffed, but § 87(2)(b) said that this was done respectfully and not shouted. § 87(2)(b) sustained a half-inch long laceration between his eyes, to the side of his left eyebrow, which was bleeding. He did not allege any injuries to his mouth, where he had stated that he had been punched by Sgt. Dym (therefore causing the abrasion to his hand). The officers picked § 87(2)(b) up and placed him in the back of an RMP used by PO Bellber and PO Gonzalez, who transported him to the PSA 4 stationhouse on Avenue C.

Inside the stationhouse, § 87(2)(b) was taken to the holding cell area, where he saw § 87(2)(b) being escorted to another cell within a few minutes of his arrival. Inside the cell, a Hispanic male officer dressed in uniform who had a chubby build and stood about 5'6", identified by the investigation as PO Rivas, told § 87(2)(b) "You're in my house now, bitch." The same officer later asked both § 87(2)(b) and § 87(2)(b) if either was pregnant. § 87(2)(b) did not see PO Rivas before being brought to the PSA 4 stationhouse.

During the arrest processing, § 87(2)(b)'s arresting officer, PO Bellber, gave him something to clean his bleeding cut, but § 87(2)(b) refused because he wanted the blood captured in his arrest photo. He refused medical treatment. In addition to the laceration to his eyebrow, § 87(2)(b) had cuts and bruises on his hands, a scraped and sprained right knee, a scraped left elbow, and a sore left shoulder. He sought medical care at a hospital in § 87(2)(b) NJ, but he could not remember the name of the hospital.

Statements to Medical Provider

On § 87(2)(b), at 8:03 pm, § 87(2)(b) sought medical treatment at § 87(2)(b) in New Jersey with a chief complaint of left shoulder and elbow pain and right knee pain. He had several abrasions to his right knee, his left elbow, and his forehead. He stated that he was in a fight with an NYPD police officer. He did not lose consciousness during this encounter. § 87(2)(b) did not make any specific statements regarding the source of his injuries, other than a fight. He did not make any specific references to being struck anywhere on his body.

Complainant / Witness: § 87(2)(b)

§ 87(2)(b) called 911 to complain about the incident on April 10, 2010, and provided telephone statements to the investigation on April 20, 2010, and January 5, 2011. § 87(2)(g) § 87(2)(b) was smoking a cigarette out her window, which is on the third floor of her building, overlooking a parking lot off Columbia Street where three boys who she did not know (one of whom was identified as § 87(2)(b)) were standing together talking. She did not recall what any of the boys looked like or what they were wearing. She did not observe them do anything illegal. As she sat, she noticed either two or three male officers in plainclothes park their vehicle near the group of boys, exit their car, and begin to question them. She could not recall what the officers looked like but said she didn't get a great look at them at the time. She thought the group of officers was composed of white males and maybe one black male but couldn't differentiate between them. She did not see any females.

The officers questioned the boys for about five minutes, during which time some of them took out their ID's and handed them to officers. After questioning the men for a few minutes, one

of the officers started to grab § 87(2)(b). He used his hands and grabbed § 87(2)(b) about the arms. § 87(2)(b) said that § 87(2)(b) did not resist, but she described a physical scuffle that included § 87(2)(b) loudly questioning the arrest and pulling away from the officers. He eventually wound up on the ground, but he was not handcuffed. § 87(2)(b) saw all of the officers kicking and holding him down. She left the window briefly at this time to get her phone and call 911 to complain that police were beating up a boy outside her residence.

While § 87(2)(b) was being struck, § 87(2)(b) could see him holding his hands up around his face and heard him shouting, “Get off me,” and “Stop hitting me.” She thought there were four officers engaged in the struggle with § 87(2)(b). She yelled down to them that she was recording them, and an officer yelled back to her that it didn't matter, and she should record all she wanted. She didn't know what became of § 87(2)(b)'s friends. She thought they were standing behind the officers while the incident unfolded, but she wasn't sure. She saw a man pass by and take pictures of the incident, but she couldn't recall what he looked like. Additional officers arrived shortly, and § 87(2)(b) assumed they came in response to her 911 call. However, they didn't do anything aside from asking the original officers what was happening. The officers did not handcuff § 87(2)(b) until they picked him up off the ground. § 87(2)(b) did not see anything in any of the officers' hands. In her initial statement to IAB, § 87(2)(b) said that the officers were striking § 87(2)(b) while he was handcuffed, on the ground.

Complainant / Witness: § 87(2)(b)

§ 87(2)(b) a daughter of § 87(2)(b) called 911 to complain about the incident on April 10, 2010, and provided a telephone statement to the CCRB on January 5, 2011. § 87(2)(b), § 87(2)(g)

At the time of the incident, § 87(2)(b) was at the back window of her apartment, which looks out on a parking lot on Columbia Street, when she heard police sirens and several people (who she later found to be officers) yelling to someone to put up their hands. She looked out the window and saw a group of five or six boys who she could not describe dispersing on the orders of police. She also saw several marked and unmarked police cars and vans arriving on the scene, and officers getting out of the vehicles. Several officers approached one boy, likely to be § 87(2)(b) and told him to put up his hands. § 87(2)(b) thought he complied but wasn't sure, as the group of officers took him to the ground almost immediately thereafter. The officers surrounded him on the ground and blocked her view of his body. However, she saw one or more (she was fairly certain it was more than one officer) officers hit § 87(2)(b) with nightsticks, although she couldn't say where on his body the blows fell or specify how many times he was struck. She saw a black male officer, who was the only officer she could describe in the group around § 87(2)(b) punch him several times. She described this as “steady punching.” She did not know where on § 87(2)(b)'s body these punches fell, because he was blocked from her view by the other officers. This is what prompted her to call 911.

§ 87(2)(b) saw the other boys who were approached gathering near a gate in front of her building trying to help § 87(2)(b). She could not identify any of the boys. When asked what they did to help, § 87(2)(b) clarified that they couldn't get near the officers for risk of being struck or arrested, but that they were shouting to the officers to stop hitting § 87(2)(b). She couldn't recall if other people gathered or formed a crowd. One boy started to run away, but § 87(2)(b) could not describe him. She said that a short, chubby male officer dressed in uniform pointed a gun at this boy and presumably chased him, but she couldn't see where they went or what became of the boy. She estimated that five to eight uniformed officers were engaged with § 87(2)(b) and she could not describe any of them except the black male officer and the chubby short male officer who chased the second boy away.

Attempts to Contact Civilians

The undersigned investigator mailed contact letters to § 87(2)(b)'s address (which was confirmed by Lexis-Nexis) on April 16, 2010, and April 21, 2010, respectively. Neither of these letters was returned by the US Postal Service. The undersigned also called § 87(2)(b) at the number provided by § 87(2)(b) and left voicemail messages four times between April 26, 2010, and May 4, 2010. § 87(2)(b) never responded to any of these contact attempts. The New York City Department of Corrections inmate tracking system indicated that § 87(2)(b) was not incarcerated in the City of New York at the time of these attempts.

NYPD Statements:

Subject Officer: SGT. ERIC DYM

- § 87(2)(b) § 87(2)(b)
- *PSA 4 patrol supervisor, worked with PO Pierre in a marked RMP, dressed in uniform, from 3:00 pm until 11:44 pm.*

Memo Book Entry

Line of Duty Injury Report

CCRB Testimony

Sgt. Dym prepared a memo book entry and a Line of Duty Injury Report on the incident date and was interviewed at the CCRB on September 28, 2010. § 87(2)(g) At 11:00 pm on April 10, 2010, Sgt. Dym, who was patrol supervisor, heard a transmission over police radio for a non-emergency call for assistance. He said that he could tell by the tone of the requesting officer's voice that there was more to the situation than they were conveying over the radio. Sgt. Dym directed his operator to go to the intersection of Columbia and Rivington Streets, which is in the immediate vicinity of the incident location. When they arrived, Sgt. Dym spoke to PO Gonzalez, who pointed out § 87(2)(b) and said that they were going to issue him a summons for disorderly conduct because he had been shouting at them. She also relayed the complaints of several young women in the area, who had called 311 and 911 complaining that § 87(2)(b) and his friends were yelling at them and making them feel uncomfortable. He thought the calls had something to do with § 87(2)(b) and his friends chasing young girls in the area. He didn't notice § 87(2)(b) until he was pointed out by the officers. § 87(2)(b) was about to round a corner and leave the area when Sgt. Dym saw him.

Based on the prior complaints (which he learned of only through his fellow officers, as he did not interview the victims of the criminal complaint himself) and § 87(2)(b)'s disorderly behavior toward the officers, Sgt. Dym determined that § 87(2)(b) should be placed under arrest. Among other reasons, Sgt. Dym cited the young women's concern for their safety as a main factor in his determination. He said that he intended to arrest § 87(2)(b) for disorderly conduct due to his behavior toward the young women and later toward the officers. He approached § 87(2)(b) who walked away and began to shout, "Suck my dick. Go fuck yourself. You're not going to stop me." There were other people, apparently part of § 87(2)(b)'s original group, who were also yelling obscenities at the officers, but Sgt. Dym ignored them because § 87(2)(b)'s arrest was his primary objective. § 87(2)(b)'s shouts prompted numerous onlookers to come out and observe the arrest, and a large crowd gathered. Sgt. Dym said he considered § 87(2)(b)'s behavior to be inciting a riot.

Sgt. Dym and the other officers approached § 87(2)(b) and Sgt. Dym informed him that he was being placed under arrest. He denied ever calling § 87(2)(b) "Mother fucker" or "stupid." § 87(2)(b) who was at first standing facing Sgt. Dym, began to fight. Sgt. Dym and

the other officers struggled to get his hands behind him and took him to the ground. During the struggle, while § 87(2)(b) was on the ground on his back and punching and kicking toward the officers, Sgt. Dym grabbed him with his left arm in an attempt to get his hands behind his back while telling him, “Stop resisting.” § 87(2)(b) bit down on the inside of the knuckle of Sgt. Dym’s left thumb. Sgt. Dym denied having anything in his hands at the time. Sgt. Dym punched § 87(2)(b) twice in the face with his right fist to get him to release the thumb from his teeth, and yelled a warning to the other officers to watch out because he had been bitten. He denied striking § 87(2)(b) with any objects and said that he struck § 87(2)(b) to open his mouth and release his thumb. After being bitten, Sgt. Dym shouted out, “Give me your fucking hands!” because he was in pain and because § 87(2)(b) had not responded to verbal commands prior to this. § 87(2)(b) released Sgt. Dym’s thumb after being struck, but continued to fight being handcuffed. Sgt. Dym didn’t see if § 87(2)(b) struck any other officers.

The struggle with § 87(2)(b) was taking place beside a fence, over which an unidentified male was leaning and filming the struggle on a cellular phone camera. The man’s camera was very close to Sgt. Dym’s face, and he instructed PO Gonzalez to move him away. At the same time a crowd was forming, and one of the individuals therein was shouting threats to the officers such as, “If you come back here you’ll get fucked up.” Sgt. Dym instructed an officer to arrest this individual, and to call for assistance for crowd control over police radio. Sgt. Dym said he was concerned for the safety of the officers and found the crowd to be dangerous. The individual characterized by Sgt. Dym as inciting the crowd, identified by the investigation as § 87(2)(b) was arrested for unlawful assembly / inciting the crowd.

§ 87(2)(b) was eventually handcuffed and placed into an RMP, while Sgt. Dym was transported to § 87(2)(b) Hospital to treat his bite wound. Sgt. Dym later observed that § 87(2)(b) was heavily intoxicated. He denied striking § 87(2)(b) after he was handcuffed, or seeing any other officer do so. He said the only physical contact he had with § 87(2)(b) after the handcuffs were secured was when he moved him into a police vehicle for transport to the stationhouse. He observed a laceration and some blood on § 87(2)(b)’s face when he was being processed at the PSA 4 stationhouse. Sgt. Dym went for medical treatment in an ambulance after returning to the stationhouse, and did not observe the majority of § 87(2)(b)’s arrest processing. However, in the time that he observed § 87(2)(b) in the stationhouse, he did not hear any officers say “You’re in my house, bitch,” or comment that either § 87(2)(b) or § 87(2)(b) appeared to be pregnant. He did not hear any other officers use profanity toward § 87(2)(b) at any time.

Subject Officer: PO SETH BELLBER

- § 87(2)(b)
- *Assigned to sector patrol with PO Christina Gonzalez, dressed in uniform, marked vehicle, worked from 3:00 pm until 11:35 pm.*

Memo Book Entry

Line of Duty Injury Report Witness Statement

Criminal Complaint Report

CCRB Testimony

PO Bellber prepared a memo book entry and a Criminal Complaint Report on the incident date, and also provided a Line of Duty Injury Report witness statement on behalf of Sgt. Dym. He was interviewed at the CCRB on October 15, 2010. His statements were consistent with one another, and also with Sgt. Dym’s statements, with the following additional information. On April 10, 2010, at 11:00 pm, PO Bellber and PO Gonzalez were parked on a corner in their RMP and were approached by a neighborhood woman, who complained that a group of men nearby

were drinking and harassing women. At the same time, their unit received a call from the command regarding complaints about the same group of men, who were within sight of the officers on Columbia Street. The group of five or six men included § 87(2)(b) Members of the group were holding and consuming what appeared to be alcoholic beverages covered by plastic shopping bags.

PO Bellber and PO Gonzalez approached the group with the intention of writing the men summonses for open container. They called out instructions such as, "That's enough. Break it up. It's late and people are complaining." The group dispersed, with some of the men, including § 87(2)(b) walking south on Columbia Street toward Delancey Street. Most of the men entered their respective buildings, but after § 87(2)(b) had walked away, he turned around and appeared to be headed back to the spot from which he had just come. The officers followed § 87(2)(b) because he was walking particularly slowly and didn't seem as though he was actually going to vacate the area. After a moment, he began shouting profanities such as "Go fuck yourself. You're pussies." PO Bellber suggested to PO Gonzalez that they return to their vehicle, cut him off, and write him a summons, both for the open container and the subsequent disorderly conduct. The other members of the group had left the area.

After the officers walked back to their vehicle, their patrol sergeant, Sgt. Dym, arrived on the scene with his operator. PO Bellber explained that Sgt. Dym was checking on them because he hadn't been able to reach them by radio prior to his arrival. PO Bellber told Sgt. Dym that they were about to write a summons to § 87(2)(b) Sgt. Dym approached § 87(2)(b) and he sidled away while muttering, "Don't touch me." Sgt. Dym asked for identification, but § 87(2)(b) refused to provide it, stating that he hadn't done anything and wasn't obligated to do so. Sgt. Dym told § 87(2)(b) if he didn't produce identification, he would be arrested, but he responded, "Fuck you. I'm not going." § 87(2)(b), § 87(2)(g) He processed § 87(2)(b)'s arrest, and he denied saying and did not hear another officer say that § 87(2)(b) was a "bitch," nor did he say or hear an officer ask if § 87(2)(b) or § 87(2)(b) was pregnant.

Witness Officer: PO CHRISTINA GONZALEZ

- § 87(2)(b)
- Assigned to sector patrol with PO Bellber, worked from 3:00 pm until 11:35 pm in a marked RMP, dressed in uniform

Memo Book Entry

Line of Duty Injury Report Witness Statement

CCRB Testimony

PO Gonzalez prepared a memo book entry and made a Line of Duty Injury Report witness statement on behalf of Sgt. Dym on the incident date and made a CCRB statement on October 15, 2010. Her statements were consistent with one another and with PO Bellber's and Sgt. Dym's statements, with the following additional information. PO Gonzalez performed crowd control while the male officers struggled to handcuff § 87(2)(b) She characterized the situation as a "riot" and said the members of the crowd were gathering in response to § 87(2)(b) who was yelling at the officers as he fought them.

Witness Officer: PO KIM PIERRE

- § 87(2)(b)
- Operator for Sgt. Dym, marked RMP #§ 87(2)(b) dressed in uniform, worked from 3:00 pm until 11:35 pm

Memo Book

CCRB Testimony

PO Pierre prepared a memo book entry on the incident date and made an in-person statement at the CCRB on October 29, 2010. § 87(2)(g)

When PO Pierre and Sgt. Dym responded to the incident location they saw Officers Bellber and Gonzalez trying to control a man, § 87(2)(b) who they were trying to arrest. They were on the sidewalk, and § 87(2)(b) was still standing, but refusing to give them his hands to be handcuffed. People from the neighborhood were gathering around and creating a disturbance, so Sgt. Dym went to assist PO Gonzalez and PO Bellber while PO Pierre tried to keep the crowd back from his fellow officers.

After a few moments PO Pierre determined to call for additional units to help with the crowd. When the additional units arrived, § 87(2)(b) was still fighting Sgt. Dym and the other officers, but the three controlled him without the assistance of the newly arriving units. When the incident was concluded, PO Pierre saw that Sgt. Dym had been bitten on the finger by § 87(2)(b).

Subject Officer: PO VICTOR RIVAS

- § 87(2)(b)
- *Assigned to PSA 4 sector B, worked from 3:00 pm until 11:35 pm, dressed in uniform, worked with PO Kelly, used an RMP*

Memo Book Entry

CCRB Testimony

PO Rivas prepared a memo book entry regarding this incident on April 10, 2010, and made an in-person statement at the CCRB on January 28, 2011. § 87(2)(g)

On April 10, 2010, PO Rivas and his partner heard a request for assistance at § 87(2)(b) over police radio and responded to the indicated location. When they arrived, they saw Sgt. Dym and several other officers struggling to handcuff an individual identified as § 87(2)(b). PO Rivas assisted by engaging in crowd control, where he noticed a man later identified as § 87(2)(b) “creep” up to the officers, and he eventually pursued and apprehended him, placing him under arrest for obstructing government administration. PO Rivas showed on a printed map of the incident location that the initial gathered crowd was in front of and to the west side of § 87(2)(b) near the corner of Delancey and Columbia Streets. When § 87(2)(b) ran away, he moved to the other side of § 87(2)(b) into the open area in the middle of the housing development between Columbia Street and Baruch Drive. PO Rivas apprehended § 87(2)(b) here and arrested him, then transported him to the PSA 4 stationhouse and processed the arrest until after 1:30 am the next day. PO Rivas did not notice § 87(2)(b) interacting with any other civilians with whom he was acquainted in the cell area or through the arrest process. He denied using profanity or offensive language toward § 87(2)(b) or any other civilian in the stationhouse, and denied hearing any other officer do so. He never interacted with § 87(2)(b) and did not know if he was present when he lodged § 87(2)(b) in his cell.

Medical Records

On April 12, 2010, § 87(2)(b) sought medical treatment at § 87(2)(b) in New Jersey and the attending physician noted abrasions to his right knee, his left elbow, and his forehead. The abrasions were healing properly, but the attending physician determined that § 87(2)(b) had also fractured his right thumb. X-rays were taken of his left arm and right knee with negative results, and both the arm and the knee were diagnosed with sprains. § 87(2)(b) was treated with a Diphtheria Tetanus and Acellular Pertusis vaccine, and was given a Ketrolac injection for pain relief.

NYPD Documents

Sprint

The Sprint printout related to the incident shows that Sgt. Dym put an arrest over police radio at 11:08 pm and made a 10-85 for crowd control at the same time. The arrest was completed at 11:17. There is no duplicate job and this printout does not show any 911 calls made to complain about § 87(2)(b). The Sprint index for the date and location revealed no duplicate jobs or complaints about men harassing young women in the area.

Arrest Report

§ 87(2)(b)'s arrest report states that he yelled and engaged in tumultuous and threatening behavior, during which he gathered a crowd of more than four people to interfere in police activity. He then bit Sgt. Dym in the left thumb, which caused a laceration, bleeding, and significant pain. § 87(2)(b)'s physical description is described as "intox alcohol."

Prisoner Holding Cell Roster

The PSA 4 holding cell roster for the incident date did not show an assigned cell attendant. The roster noted both § 87(2)(b) and § 87(2)(b) and indicated that they were guarded by PO Bellber and PO Rivas, respectively.

§ 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on May 26, 2010, claiming serious personal injury, mental anguish, economic loss, excessive use of force, battery, false arrest, malicious prosecution, and denial of civil rights, and seeking \$1,000,000.00 as redress. There has been no 50-H hearing to date.

Civilian Criminal History

- As of February 15, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b).

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b).

Subject Officers CCRB History

- Sgt. Dym has been a member of the service for six years and there are no substantiated CCRB allegations against him.
- PO Bellber has been a member of the service for five years and there are no substantiated CCRB allegations against him.
- PO Rivas has been a member of the service for thirteen years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

PO Gonzalez and PO Bellber acknowledged being the first officers to interact with § 87(2)(b). Sgt. Dym acknowledged arriving at the incident location shortly thereafter with PO

Pierre, and PO Rivas acknowledged arriving in response to a call for assistance and interacting with § 87(2)(b).

Investigative Findings and Recommendations

Allegation A – Discourtesy: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym spoke rudely and obscenely to § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Dym yelled, “Hey, mother fucker,” to him upon his initial approach. Sgt. Dym denied this. However, he acknowledged telling § 87(2)(b) to “give me your fucking hands” at the same time as § 87(2)(b) was biting down on his left thumb. Although he acknowledged using discourteous language at the time of the incident, Sgt. Dym denied using the language alleged by § 87(2)(b) in turn. § 87(2)(b) alleged particular utterances that did not include Sgt. Dym’s exclamations at the moment his thumb was bitten.

§ 87(2)(g)

Allegation B – Abuse of Authority: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym stopped § 87(2)(b)

§ 87(2)(b) alleged that an officer, identified by the investigation as Sgt. Dym, forcibly stopped him on Columbia Street after PO Gonzalez had asked him to disperse. Sgt. Dym agreed with this version of events and said that he stopped § 87(2)(b) because he was informed by Officers Gonzalez and Bellber that women in the area had complained that § 87(2)(b) and his friends had been harassing them. In addition, PO Gonzalez and PO Bellber had observed § 87(2)(b) and his friends consuming open containers of alcohol, and § 87(2)(b) shouted profanities toward the officers after their initial approach.

New York State law requires that an officer have reasonable suspicion that criminal activity is afoot prior to stopping an individual. § 87(2)(b), § 87(2)(g)

Allegation C – Force: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym struck § 87(2)(b) with a blunt instrument.

Allegation D – Force: Outside § 87(2)(b) in Manhattan, Sgt. Eric Dym used physical force against § 87(2)(b)

Allegation E – Force: Outside § 87(2)(b) in Manhattan, PO Seth Bellber used physical force against § 87(2)(b)

§ 87(2)(b) alleged that several officers ran up to him and began to punch him, including Sgt. Dym, who he said hit him with brass knuckles or a handcuff because “it didn’t feel like a regular punch.” He did not see anything in Sgt. Dym’s hand and offered several different versions of how this came to be, none of which were corroborated by the officers interviewed or other witnesses. § 87(2)(b) the complainant / witness who called 911 from inside her apartment, did not think any of the officers was holding anything in their hands, stated that § 87(2)(b) was not handcuffed until after the struggle ended, and (although she stated that § 87(2)(b) “was not resisting,”) described a physical struggle wherein § 87(2)(b) pulled away from, yelled at, and struggled with the officers as they tried to handcuff him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F – Force: Outside § 87(2)(b) in Manhattan, PO Victor Rivas used physical force against § 87(2)(b)

§ 87(2)(b) did not cooperate with the investigation. § 87(2)(g)

Allegation G – Offensive Language: Inside the PSA 4 stationhouse, PO Victor Rivas made offensive remarks to § 87(2)(b) regarding his gender.

§ 87(2)(b) alleged that an officer with whom he had not interacted during the incident, who fit the description of § 87(2)(b)'s arresting officer, PO Rivas, told him and § 87(2)(b) "You're in my house now, bitch," inside the PSA 4 stationhouse holding cell area during his arrest processing. PO Bellber, who remained with § 87(2)(b) throughout his arrest processing, denied that such an interaction occurred, as did PO Rivas. § 87(2)(g)

Team: ____1____

Investigator: _____ Kathryn Duffy _____ 2/15/11 _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date